

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 17, 2002

C III COMMUNICATIONS OPERATIONS
Petition for Finding of Public Convenience
And Necessity to Provide Service as an
Interexchange Telephone Utility

ORDER GRANTING AUTHORITY
TO PROVIDE INTEREXCHANGE
SERVICE AND APPROVING
SCHEDULE OF RATES AND
TERMS AND CONDITIONS

Docket No. 2003-276

BROADWING COMMUNICATIONS
SERVICES INC. and BROADWING
TELECOMMUNICATIONS INC. Requests
for Approvals of Transfers of Assets

ORDER GRANTING APPROVAL
OF TRANSFER OF ASSETS AND
WAIVER OF CHAPTER 296, § 3

Docket No. 2003-279

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In Docket No. 2003-276, the Commission grants C III Communications Operations (C III Ops or Company) the authority to provide facilities-based and resold interexchange service throughout the State of Maine and approves the Company's Revised Terms and Conditions and Rate Schedules, Original Pages 1 through 87, as filed on May 15, 2003. Pursuant to Chapter 280, §§ 11 and 12, we exempt C III Communications Operations from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below. In Docket No. 2003-279, we grant approval to Broadwing Communications Services, Inc. (Broadwing CSI) and Broadwing Telecommunications, Inc. (Broadwing TI) to transfer their public utility assets to C III Communications Operations. Both entities state that they will apply for authority to abandon service following closing of the anticipated transactions. Because Broadwing TI is also transferring its customer base to C III Communications consistent with FCC regulations governing such transfers, we also grant Broadwing TI a waiver from the anti-slamming provisions of Chapter 296, § 3 of our Rules.

I. APPROVAL OF APPLICATION TO SERVE

On May 15, 2003, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, C III Communications Operations applied for authority to provide interexchange service in Maine. Before we grant approval under § 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where a utility is already authorized to provide, or is providing, the same or similar service.

The Telecommunications Act of 1996, 47 U.S.C. § 253(a), states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting C III Communications Operations the authority to provide interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

C III Communications Operations's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

II. SERVICE TERRITORY

C III Communications Operations has requested authority to provide interexchange service throughout the state. We grant that authority.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by C III Communications Operations to go into effect. C III Communications Operations has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in C III Communications Operations 's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of C III Communications Operations's services and rates in the market place provides an

adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by C III Communications Operations to go into effect.

IV. PAYMENT OF ACCESS CHARGES

Our approval of C III Communications Operations's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules. To the extent that C III Communications Operations provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers.

C III Communications Operations may also offer service as a switchless reseller in addition to facilities-based interexchange service. Switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, C III Communications Operations's underlying facilities-based carrier must also have authority to provide intrastate service in Maine. C III Communications Operations shall inform the Commission of the identity of any underlying carrier from which it purchases interexchange services that it resells on a switchless basis. That carrier must pay access charges for the service in Maine. If C III Communications Operations begins to use another carrier or carriers, those carriers must be authorized to provide intrastate facilities-based interexchange service, and C III Communications Operations shall notify the Commission and all local exchange carriers that it uses for the provision of access services as required by the ordering paragraphs.

V. WAIVERS; REPORTING REQUIREMENTS

Pursuant to sections 11(A) and 12(A) of Chapter 280, C III Communications Operations is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, C III Communications Operations is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Because C III Communications Operations's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, as required by Chapter 280, § 11(A), C III Communications Operations must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, its annual intrastate minutes of use for the purpose of determining its

regulatory assessment, and such other information requested by the Commission.¹ If C III Communications Operations resells service to other facilities-based or switchless telephone service providers, the Company must maintain its records in a way that it is able to separately identify those sales. Pursuant to Chapter 280, § 11(B),

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below. C III Communications Operations shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. AUTHORITY TO TRANSFER ASSETS

Broadwing Communications Services, Inc. and Broadwing Telecommunications, Inc. have requested approval, pursuant to 35-A M.R.S.A. § 1101, to transfer their “broadband” assets, including the customers of Broadwing TI, to C III Ops. Section 1101 requires a utility to obtain Commission approval to “[s]ell, lease, assign, mortgage or otherwise dispose of or encumber the whole or part of its property that is necessary or useful in the performance of its duties to the public....” We do not consider a customer base to constitute such property. Because there are multiple interexchange service providers in the competitive interexchange market, we see no reason to prevent Broadwing CSI and Broadwing TI from transferring assets that are useful in the performance of public utility service to another utility. We therefore approve the transfers.

VII. WAIVER OF SLAMMING RULE

As noted above, Broadwing TI is planning to transfer the its customer base to C III Ops. Doing so without the approval of customers might violate the Commission’s anti-slamming Rule, Chapter 296, § 3 (Selection of Primary Interexchange and Local Exchange Carriers). FCC rules govern such bulk transfers (including for intrastate service). 47 C.F.R. 64.1120(e). If a carrier complies with the requirements of the FCC rule (primarily a notice requirement of the transfer and of the right of the customer to obtain service from

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

another carrier) the action does not constitute an unauthorized transfer of customers (slamming). The applicants have submitted a draft notice to customers that complies with the federal rule. We grant a waiver to C III Ops from the requirements of Chapter 296, § 3, provided that C III Ops sends the proposed notice to each of the customers it is acquiring from Broadwing TI.

VIII. OTHER REQUIREMENTS

C III Communications Operations shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 8.

IX. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of C III Communications Operations to provide interexchange service throughout the State of Maine;

2. Approve C III Communications Operations's proposed Revised Terms and Conditions and Rate Schedules Original Pages 1 through 87, as filed on May 15, 2003. Those Schedules shall be effective on the date of this Order.

3. Order that C III Communications Operations pay interexchange access charges as required pursuant to approved access rate schedules filed by local exchange carriers;

4. Direct that C III Communications Operations shall notify each local exchange carrier in whose service area it intends to originate or terminate calls the date on which it will commence providing facilities-based interexchange service, as defined in this Order;

5. Exempt C III Communications Operations from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

6. Exempt C III Communications Operations from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of or of any entity that owns more than 50% of C III Communications Operations. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by

Chapter 280, § 12(B). As required by Chapter 280, § 12(C), C III Communications Operations shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. C III Communications Operations shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, C III Communications Operations shall amend its rate schedules and terms and conditions to reflect any change in identity; and

8. Order that C III Communications Operations shall comply with all applicable statutes of the State of Maine and rules of the Commission, including the requirement in 35-A M.R.S.A. § 7305 that interexchange carriers provide notice to all affected customers of any increase to any rate at least 25 days prior to the increase taking effect;

9. Grant approval to Broadwing Communications Services, Inc. and Broadwing Telecommunications, Inc., pursuant to 35-A M.R.S.A. § 1101, to transfer its property that is necessary or useful in the performance of its duties to the public; and

10. Grant to C III Communications Operations a waiver from the provisions of Maine Public Utilities Commission Rules, Chapter 296, § 3, conditioned on C III Communications Operations sending the notice contained in its application package (Attachment 4) to all of the customers transferred from Broadwing Telecommunications, Inc., and on compliance by C III Communications Operations with all other requirements of 47 C.F.R. 64.1120(e).

Dated at Augusta, Maine this 17th day of June, 2003

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.